IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

ITA No. 80 of 2006
DATE OF DECISION : 13-11-2006

The Commissioner of Income Tax, Faridabad. … APPELLANT.

Versus

M/s Lakhani Sales Corporation, Faridabad. … RESPONDENT

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Yogesh Putney, Advocate,
for the appellant.

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JUDGMENT:

This appeal filed under Section 260-A of the Income Tax Act,1961 (in short the Act)is directed against order dated 31.5.2005 passed by the Income Tax Appellate Tribunal, Delhi Benches "E", Delhi (in short the ITAT) in ITA No. 3502/Del/2001 for the assessment year 1997-98 raising the following questions of law:

" 1) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was correct in law in confirming the order of CIT(A) in deleting the disallowance of Rs.1,72,279/- made by the Assessing Officer out of car expenses for personal use by the partners ?.

2) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT was correct in law in confirming the order of CIT(A) in deleting the disallowance of Rs.3,50,000/- being commission paid to Sh. J.C.Arora ?.

In brief, the facts of the case are that M/s Lakhani Sales Corporation, Faridabad, (hereinafter referred to as the assessee) filed its return of income for the assessment year 1997-98 on 29.10.1997 thereby declaring its income of Rs.28,35,980/-. On completion of assessment on a total income of Rs.33,74,010/, the Assessing Officer; (i) disallowed Rs.11,174/- incurred on telephone installed at the residential premises of the AGM, M.D. And G.M. and Directors of the company on the ground that personal use of the telephone installed at the residential premises could not be ruled out; (ii) disallowed the expenses to the tune of Rs.1,72,279/- being 1/8th of the total car expenses including insurance and depreciation claimed for personal and non-business use of the car; (iii) further disallowed a sum of Rs.3,50,000/- paid as commission to Shri J.C.Arora, for want of evidence of services rendered on account of which commission was paid to him; and (iv) disallowed a sum of Rs.4575/- spent towards membership and subscription fees, being personal in nature and for want of evidence in that regard. Accordingly, the Assessing Officer vide order dated 31.3.2000 (Annexure A-1) ordered for issuance of a penalty notice under Section 271-E of the Act ibid. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income Tax(Appeals) Faridabad, (in short the CIT) who vide his order (Annexure A-II) partly allowed the same to the extent that under ground No.(i) the addition of Rs.11,174/- was restricted to Rs.4000/- while the penalties ordered under grounds (ii) (iii) and (iv),referred to above, were ordered to be deleted. The Revenue then challenged the said order of the Commissioner before the ITAT which was dismissed vide order dated 31.5.2005(Annexure A-III). Hence, the present appeal by the Revenue.

It has been brought to our notice that for the previous assessment year 1996-97 relating to this very assessee, the Assessing Officer had ordered penalty and disallowed similar expenses which in appeal before the Commissioner were deleted/restricted in the manner similar to the one ordered in the instant case and the said order was further upheld by the ITAT by dismissal of appeal by the Revenue, as has been done in the instant case. The Revenue then had approached this Court by way of ITA No.350 of 2005 which was dismissed by this Court on 22.5.2005 as the appeal did not constitute any question of law and merely

contained factual statements. In this view of the matter, we are not inclined to take a view contrary view to the one taken by the CIT and the ITAT and reiterate the view taken by us in the afore-stated appeal.

In view of the above, this appeal is dismissed.

(ARVIND KUMAR)
JUDGE

(J. S. NARANG)
JUDGE

November 13, 2006
JS